

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 v. :
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 :
MIGUEL ROSARIO, :
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 Defendant. :
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Colm F. Connolly, Esquire, United States Attorney, and April M. Byrd, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Eleni Kousoulis, Esquire, Assistant Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

June 20 2005
Wilmington, Delaware


Farnan, District Judge.

Presently before the Court is the Motion To Suppress Evidence and Statements (D.I. 18) filed by Defendant, Miguel Rosario. For the reasons set forth below, Mr. Rosario's Motion will be denied.

BACKGROUND

Defendant Miguel Rosario was indicted on one count of possession with the intent to distribute more than 5 grams of cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B); one count of possession with the intent to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); one count of possession with the intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C); one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. §§ 924(c)(1)(A) and (D); one count of possession of a firearm by a felon, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and one count of re-entry after deportation, in violation of 8 U.S.C. §§ 1326(a) and (b)(1).

On October 21, 2004, Mr. Rosario moved, pursuant to Federal Rule of Criminal Procedure 12(b)(3) and the Fourth, Fifth Amendments of the United States Constitution, to suppress any evidence directly or indirectly derived from the search of a black, 2000 Ford Focus automobile and the search of 45 Delvin

Terrace, Wilmington, Delaware, on or about May 21, 2004.

By his motion, Mr. Rosario contends that the search of his automobile by Wilmington police officers was unconstitutional, and that it tainted the subsequent search of his residence and his subsequent statements to law enforcement officers. Accordingly, Mr. Rosario moves to suppress both the evidence seized during the search of his automobile and residence and the statements obtained from him after the evidence seizure.

On March 9, 2005, the Court held a hearing on the Motion to Suppress (D.I. 18), and post-hearing briefing was completed on June 10, 2005. Two police officers testified at the hearing: City of Wilmington Police Detective Thomas Looney ("Detective Looney") and City of Wilmington Police Detective Hector Luis Cuadrado ("Detective Cuadrado"). This Memorandum Opinion sets forth the Court's findings of fact and conclusions of law.

FINDINGS OF FACT

1. Detective Looney has worked for the Wilmington Police Department for fifteen years. For eight of those years, Detective Looney has been assigned to the Drug, Organized Crime and Vice Division. (Tr. at 4-5.)¹

2. In March 2004, Detective Looney received information from

¹ Transcript of the March 9, 2005, Suppression Hearing (D.I. 25). Unless otherwise noted, transcript citations at the end of a numbered paragraph are for the entire numbered paragraph.

a confidential informant that a person by the name of Orlando Vasquez was distributing drugs in Delaware. (Tr. at 6.)

3. Detective Looney had used this particular informant more than 25 times and found the informant's information reliable. (Tr. at 17.)

4. The informant communicated to Detective Looney that Mr. Vasquez resided at 45 Delvin Terrace in Woodland Apartments in New Castle County, Delaware and drove a black Ford Focus automobile. (Tr. at 18.)

5. The informant advised Detective Looney that Mr. Vasquez stored contraband behind the radio in his automobile when transporting the contraband from one place to another. (Tr. at 10-11.)

6. The informant informed Detective Looney that Mr. Vasquez distributed drugs in the City of Wilmington and on Mary Ellan Drive in Silver Spring Apartments in New Castle County, Delaware. (Tr. at 10.)

7. The informant subsequently participated in a "controlled buy" at 45 Delvin Terrace and told Detective Looney that the person who sold him drugs inside 45 Delvin Terrace was Orlando Vasquez. Detective Looney was not present inside the residence at the time of the controlled buy. (Tr. at 7.)

8. In March 2004, Detective Looney and Detective Sargeant Paul Sullivan observed a black Ford Focus in the parking lot of

the apartment complex at 45 Delvin Terrace. The detectives checked the license plate on the vehicle and found it was registered to Orlando Vasquez. (Tr. at 7-8.)

9. In May 2004, the informant told Detective Looney that Orlando Vasquez had returned from Philadelphia with a large amount of cocaine and heroin. (Tr. at 7.)

10. On May 21, 2004, Detective Hector Cuadrado and Detective Rodney Ross set up surveillance in the apartment complex at 45 Delvin Terrace. During their surveillance, the detectives observed a black male exit an apartment, walk through the courtyard, and enter the black Ford Focus, which was parked on Delvin Terrace. The man was carrying a white plastic bag. (Tr. at 9, 20.)

11. The surveillance officers followed the Ford Focus. Detective Looney and Detective Sargeant Sullivan joined in the surveillance in time to see the vehicle pull onto Mary Ellan Drive in Silver Spring Apartments. (Tr. at 11.)

12. As the driver of the Ford Focus exited the vehicle, Detective Looney and Detective Sargeant Sullivan approached him on the driver's side of the automobile. The driver was halfway out of the vehicle when the officers approached him and identified themselves as police officers. (Tr. at 11.)

13. The driver agreed to speak with Detective Looney and Detective Sargeant Sullivan. (Tr. at 12.)

14. Through the open driver's door of the vehicle, Detective Looney observed a white plastic bag on the passenger seat. Through the open top of the white plastic bag, Detective Looney observed a cardboard box and plastic bags that had red apples on them. (Tr. at 12-13.)

15. Detective Looney testified that, from his experience and training as a member of the Wilmington Police Department's drug unit, he recognized the bags as paraphernalia commonly used by drug traffickers to package illegal drugs. He also recognized the cardboard box as normally containing small glassine drug baggies. (Tr. at 13.)

16. Detective Looney was aware that possession of drug paraphernalia intended for use in storing or concealing controlled substances is prohibited by Delaware statute. (Tr. at 13; See 16 Del. C. §§ 4771, 4774.) In Delaware, "any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony." 16 Del. C. § 4774(b).

17. Detective Looney placed the driver of the Ford Focus under arrest and advised him of his Miranda rights in English. (Tr. at 13-15.) The driver responded that he understood his rights. Detective Looney did not question the driver at this time. (Tr. at 15.)

18. A crowd of onlookers started to assemble outside the apartment complex and the vehicle. Detective Looney placed the driver into Detective Sargent Sullivan's vehicle and drove the Ford Focus to the parking lot of a plumbing supply business a few blocks away. (Tr. at 15.)

19. In the parking lot, Detective Looney pulled the unfastened car radio out of the dashboard. Behind the radio, Detective Looney observed a handgun and a plastic bag containing zip-lock bags that contained white and tannish substances. Detective Looney replaced the radio and drove the vehicle to the police station, where it was searched. (Tr. at 16.)

20. After the vehicle was searched, the Wilmington Police Department obtained a warrant to search 45 Delvin Terrace.

21. The officers took the driver to the Wilmington Police Department building, where he was identified as Orlando Vasquez. At the police station, Mr. Vasquez was again advised of his Miranda rights, this time in Spanish. Mr. Vasquez signed a Miranda waiver form that was written in Spanish. (Tr. at 33-38, Gov. Exhibit 1.)

22. Detective Cuadrado and Detective George Taylor interviewed Mr. Vasquez. The interview was conducted in Spanish. (Tr. at 38.)

23. The parties do not dispute that Orlando Vasquez is the same person as the defendant, Miguel Rosario.

CONCLUSIONS OF LAW

I. Whether Mr. Rosario's Arrest Was Supported By Probable Cause

1. "Law enforcement authorities do not need a warrant to arrest an individual in a public place as long as they have probable cause to believe that person has committed a felony." United States v. Burton, 288 F.3d 91, 98 (3d Cir. 2002) (quoting United States v. McGlory, 968 F.2d 309, 342 (3d Cir. 1992)); see also United States v. Watson, 423 U.S. 411, 421 (1976).

2. "Probable cause exists where the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a reasonable person to believe an offense had been committed." McGlory, 968 F.2d at 342; see also Beck v. Ohio, 379 U.S. 89, 91 (1964) (an arrest is constitutional if "at the moment the arrest was made, the officers had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.").

3. Probable cause "is to be viewed from the vantage point of a prudent, reasonable, cautious police officer on the scene at the time of the arrest guided by his experience and training." United States v. Davis, 458 F.2d 819, 821 (D.C. Cir. 1972).

4. Whether the police have probable cause is determined from

the totality of the circumstances. Illinois v. Gates, 462 U.S. 213, 230-32 (1983).

5. In the instant case, the Court concludes, based on the totality of the circumstances, the police officers had probable cause to arrest Mr. Rosario.

6. First, there is no evidence that the informant was an anonymous tipster. Rather, the informant provided Detective Looney with information at least twenty-five times in the past, and Detective Looney testified that he found the informant reliable. Further, the informant's information was based on personal knowledge, and, in the Court's view, firsthand knowledge is inherently more reliable than hearsay. The informant personally observed Mr. Rosario's participation in the "controlled buy." After receiving a tip from a known informant with personal knowledge, Detective Looney corroborated significant portions of the tip information before approaching Mr. Rosario. Detective Looney organized the controlled buy and verified that the black Ford Focus was indeed registered to the Defendant.

7. Second, Detective Looney was an experienced drug unit officer. After the informant told Detective Looney that Mr. Rosario sold drugs on Mary Ellan Drive, Detective Looney observed Mr. Rosario drive to Mary Ellan Drive. At the time Detective Looney approached Mr. Rosario, Detective Looney observed on the

passenger seat of Mr. Rosario's vehicle, in plain view, plastic bags with red apples on them in a cardboard box. Based on his experience and training, he recognized the plastic bags and cardboard box as illegal drug paraphernalia. The individual experience of an arresting officer is a relevant factor for evaluation by a court because "conduct innocent in the eyes of the untrained may carry entirely different messages to the experienced or trained observer." United States v. Davis, 458 F.2d 819, 822 (D.C. Cir. 1972). Thus, in the Court's view, Detective Looney's observations about the items he saw in the vehicle carry additional weight because of his experience.

8. Viewing the totality of the circumstances established by the Government's evidence in light of the informant's reliability and Detective Looney's experience and training, the Court concludes there was a reasonable basis for the police officers to believe that Mr. Rosario was committing a crime. Thus, the Court concludes that the police officers had probable cause to arrest Mr. Rosario.

II. Whether The First Search Of Mr. Rosario's Automobile Was Conducted Pursuant To One Of The Exceptions To The Warrant Requirement

9. The Fourth Amendment provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." U.S. Const. amend. IV.

10. A defendant who files a motion to suppress ordinarily carries the burden of proof. Rakas v. Illinois, 439 U.S. 128, 130 n. 1 (1978). However, where a search is conducted without a warrant, as is the case here, the burden shifts to the Government to demonstrate by a preponderance of the evidence that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement. See United States v. Herrold, 962 F.2d 1131, 1137 (3d Cir. 1992).

11. Due to the events leading up to Mr. Rosario's arrest on Mary Ellan Drive, the Court concludes that probable cause existed to conclude that the Ford Focus contained contraband. See U.S. v. Burton, 288 F.3d 91, 101-102 (3d Cir. 2002).

12. The automobile exception to the warrant requirement permits law enforcement officers to seize and search an automobile without a warrant if "probable cause exists to believe it contains contraband." Pennsylvania v. Labron, 518 U.S. 938, 940 (1996). While a seizure or search of property without a warrant ordinarily requires a showing of both probable cause and exigent circumstances, the "ready mobility" of automobiles allows a search based only on probable cause. See Maryland v. Dyson, 527 U.S. 465, 466-67 (1999).

13. Circumstances informing the Court's conclusion are: 1) a reliable informant told Detective Looney that Mr. Rosario had just returned from Philadelphia with a large shipment of illegal drugs; 2) the informant told Detective Looney that Mr. Rosario

stored drugs behind the radio in his vehicle when transporting drugs from one location to another; 3) the informant told Detective Looney that Mr. Rosario distributed illegal drugs on Mary Ellan Drive; and 4) Mr. Rosario had just been arrested for possessing illegal drug paraphernalia on Mary Ellan Drive. These circumstances coupled with the events previously recounted, lead the Court to conclude that probable cause existed to believe the Ford Focus contained contraband.

14. Because the Court concludes that Detective Looney's initial search of the Ford Focus was proper pursuant to the vehicle exception to the search warrant requirement, the Court need not consider the parties' arguments with respect to whether the search was proper as a search incident to arrest.

15. In sum, the Court concludes that the first search of Mr. Rosario's automobile did not violate his Fourth Amendment rights.

II. Whether The Search Of Mr. Rosario's Residence and His Interview Were Tainted By The First Search Of Mr. Rosario's Automobile

16. The exclusionary rule serves to deter constitutional violations by denying the government the benefit of those violations. Segura v. United States, 468 U.S. 796, 804 (1984). Evidence derived from constitutional violations may not be used at trial because illegally derived evidence is considered "fruit of the poisonous tree." United States v. Pelullo, 173 F.3d 131, 136 (3d Cir. 1999); Wong Sun v. United States, 371 U.S. 471, 487-88 (1963).

17. Because the Court concludes that no violation of Mr. Rosario's Fourth Amendment rights occurred as a result of the first search of his automobile, the Court concludes that the search of Mr. Rosario's residence and Mr. Rosario's statements at the police station were not tainted pursuant to the exclusionary rule.

18. Accordingly, the Court will deny Defendant's Motion To Suppress Evidence and Statements (D.I. 18) filed by Mr. Rosario.

An appropriate Order will be entered.

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FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
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MIGUEL ROSARIO, :
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 Defendant. :

Criminal Action No. 04-64 JJF

ORDER

At Wilmington this 22 day of June 2005, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Motion To Suppress Evidence and Statements (D.I. 18) filed by Mr. Rosario is **DENIED**.


UNITED STATES DISTRICT JUDGE